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18 *Government Defendants Sued in their*
19 *Official Capacities*

20 UNITED STATES DISTRICT COURT
21
22 NORTHERN DISTRICT OF CALIFORNIA
23
24 SAN FRANCISCO DIVISION

25 CAROLYN JEWEL, *et al.*

26 Plaintiffs,

27 v.

28 NATIONAL SECURITY AGENCY, *et al.*

Defendants

) No. 08-cv-4873-VRW

)

) **CLASSIFIED DECLARATION**
) **OF DENNIS C. BLAIR**
) **DIRECTOR OF NATIONAL**
) **INTELLIGENCE**

)

) **EX PARTE, IN CAMERA**
) **SUBMISSION**

)

) Date: June 25, 2009
) Time: 2:30 p.m.
) Courtroom: 6, 17th Floor

)

) Chief Judge Vaughn R. Walker

)

)

1 I, Dennis C. Blair, do hereby state and declare as follows:

2 ~~(U)~~ INTRODUCTION

3
4 1. ~~(U)~~ I am the Director of National Intelligence (DNI) of the United States. I have
5 held this position since January 29, 2009. In 2002, I retired as an Admiral from the United
6 States Navy after a 34-year naval career, which included my service as Commander-in-Chief of
7 the U.S. Pacific Command. During my naval career, I also served as Director of the Joint Staff
8 and as Associate Director of Central Intelligence for Military Support, as well as in policy
9 positions on the National Security Council staff. From 2003 to 2006, I was President and CEO
10 of the Institute for Defense Analyses, an organization that analyzes and makes recommendations
11 on national security policy matters.
12

13 2. ~~(U)~~ The purpose of this declaration is to formally assert, in my capacity as the
14 Director of National Intelligence and head of the United States Intelligence Community, the
15 military and state secrets privilege (hereafter "state secrets privilege") and a statutory privilege
16 under the National Security Act, *see* 50 U.S.C. § 403-1(i)(1), in order to protect intelligence
17 sources and methods that are at risk of disclosure in this case. The statements made herein are
18 based on my personal knowledge as well as on information provided to me in my official
19 capacity as the Director of National Intelligence.
20
21

22 ~~(U)~~ SUMMARY

23 3. ~~(U)~~ In the course of my official duties, I have been advised of this lawsuit and the
24 allegations at issue in the plaintiffs' Complaint. In personally considering this matter, I have
25 executed a separate unclassified declaration dated April 3, 2009. Moreover, I have read and
26 personally considered the information contained in the Public and *In Camera*, *Ex Parte*
27 Declaration of Deborah A. Bonanni, Chief of Staff, National Security Agency, executed on April
28

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ICS//ORCON/NOFORN//MR~~
3, 2009 (hereafter "Classified NSA Declaration"). Disclosure of the information covered by this

privilege assertion reasonably could be expected to cause exceptionally grave damage to the national security of the United States and, therefore, the information should be excluded from any use in this case. In addition, it is my judgment that sensitive state secrets are so central to the subject matter of the litigation that any attempt to proceed in the case will substantially risk the disclosure of the classified privileged national security information described herein and will therefore risk exceptionally grave damage to the national security of the United States.

4. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ As the NSA states, *see* Classified NSA Decl. ¶¶ 4-7, the allegations in this lawsuit put at risk of disclosure information concerning several highly classified and critically important NSA intelligence activities that commenced after the 9/11 terrorist attacks, but which are now conducted pursuant to authority of the Foreign Intelligence Surveillance Act ("FISA"), including ongoing activities conducted under orders approved by the Foreign Intelligence Surveillance Court ("FISC"). Specifically, in order to address plaintiffs' allegation that the NSA, with the assistance of telecommunication companies including AT&T, has indiscriminately intercepted the content and obtained the communications records of millions of ordinary Americans as part of an alleged presidentially authorized "Program" after 9/11, *see, e.g.*, Complaint at ¶¶ 2-13; 39-97, further litigation risks the disclosure of information concerning several classified NSA intelligence activities, sources and methods,

[REDACTED]
[REDACTED] in connection with NSA's (1) targeted content surveillance aimed at al-Qaeda and affiliated terrorist organizations, pursuant to the Terrorist Surveillance Program ("TSP") [REDACTED]
[REDACTED] (2) the bulk collection and targeted analysis of non-content information about telephone and Internet communications—critically important and highly

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~/TSP//HCS//ORCON/NOFORN//MR~~
sensitive activities that are also now conducted pursuant to FISC orders and that enable the NSA
to uncover the contacts [REDACTED]

[REDACTED]; and (3) [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] This lawsuit
therefore puts at risk of disclosure information concerning essential foreign intelligence-
gathering activities utilized to meet the extremely serious threat of another terrorist attack on the
U.S. Homeland [REDACTED] (a threat which I describe further below based
on recent assessments of the National Counterterrorism Center (NCTC) prepared in January
2009 and March 2009.)

5. ~~(TS//SI-~~ [REDACTED] ~~/TSP//OC/NF)~~ Accordingly, as set forth further below, I am
asserting the state secrets privilege and the DNI's authority to protect intelligence sources and
methods pursuant to 50 U.S.C. § 403-1(i)(1) to protect against the disclosure of the highly
classified intelligence sources and methods put at issue in this case and vital to the national
security of the United States, including: (1) any information that would tend to confirm or deny
whether particular individuals, including the named plaintiffs, have been subject to the alleged
NSA intelligence activities; (2) information concerning NSA intelligence sources and methods,
including facts demonstrating that the content collection under the TSP was limited to specific
al-Qaeda and associated terrorist-related international communications and was not a content
surveillance dragnet as plaintiffs allege; (3) facts that would tend to confirm or deny the
existence of the NSA's bulk non-content (i.e., meta data) collection and use, and any information
about those activities; and (4) [REDACTED]

[REDACTED] I specifically concur with the NSA that

~~TOP SECRET//COMINT~~ [REDACTED] ~~/TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//HCS//ORCON/NOFORN//MR~~
1 public speculation about alleged NSA activities does not diminish the need to protect intelligence
2 sources and methods from further exposure, and that official confirmation and disclosure of the
3 classified privileged national security information described herein would cause exceptionally
4 grave damage to the national security. For these reasons, as set forth further below, I request that
5 the Court uphold the state secrets and statutory privilege assertions that I am make herein, as
6 well as the statutory privilege assertion made by the NSA pursuant to Section 6 of the National
7 Security Agency Act, see 50 U.S.C. § 402 (note), and protect the information described in this
8 declaration from disclosure.
9

10 ~~(U)~~ CLASSIFICATION OF DECLARATION

11 6. ~~(S)~~ Pursuant to the standards in Executive Order No. 12958, as amended by
12 Executive Order No. 13292, this declaration is classified as: ~~TOP SECRET//COMINT~~ [REDACTED]
13 [REDACTED] ~~//TSP//HCS//ORCON/NOFORN//MR~~. The details concerning these classification
14 markings are set forth in the Classified NSA Declaration at ¶¶ 8-11 and are briefly summarized
15 here. Under Executive Order No. 12958, information is classified "TOP SECRET" if
16 unauthorized disclosure of the information reasonably could be expected to cause exceptionally
17 grave damage to the national security of the United States; "SECRET" if unauthorized disclosure
18 of the information reasonably could be expected to cause serious damage to national security;
19 and "CONFIDENTIAL" if unauthorized disclosure of the information reasonably could be
20 expected to cause identifiable damage to national security. At the beginning of each paragraph
21 of this declaration, the letters "U," "C," "S," and "TS" indicate respectively that the information
22 is either UNCLASSIFIED, or is classified CONFIDENTIAL, SECRET, or TOP SECRET.
23

24 7. ~~(S)~~ Additionally, this declaration also contains Sensitive Compartmented
25 Information (SCI), which is subject to special access and handling requirements because it
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28

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//HCS//ORCON/NOFORN//MR~~

1 involves or derives from particularly sensitive intelligence sources and methods. This
2 declaration references communications intelligence (COMINT), also referred to as special
3 intelligence (SI), which is a subcategory of SCI that identifies information that was derived from
4 exploiting cryptographic systems or other protected sources by applying methods or techniques,
5 or from intercepted foreign communications. This declaration also references human
6 intelligence (HCS), another subcategory of SCI that identifies information derived from
7 individuals who provide intelligence information. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 8. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ This declaration also contains information
12 about the Terrorist Surveillance Program (TSP), a controlled access signals intelligence program
13 under presidential authorization in response to the attacks of September 11, 2001. Information
14 pertaining to this program is denoted with the special marking "TSP." [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 9. ~~(S)~~ Finally, information labeled "NOFORN" may not be released to foreign
21 governments, foreign nationals, or non-U.S. citizens without permission of the originator and in
22 accordance with DNI policy. The "ORCON" designator means that the originator of the
23 information controls to whom it is released. Finally, this document is marked Manual Review
24 ("MR") indicating that it is not subject to automatic declassification at any specific date.
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26 ~~(U)~~ BACKGROUND ON DIRECTOR OF NATIONAL INTELLIGENCE

27 10. ~~(U)~~ The position of Director of National Intelligence was created by Congress in
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~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//HCS//ORCON/NOFORN//MR~~
the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, §§ 1011(a) and
1097, 118 Stat. 3638, 3643-63, 3698-99 (2004) (amending sections 102 through 104 of Title I of
the National Security Act of 1947). Subject to the authority, direction, and control of the
President, the Director of National Intelligence serves as the head of the U.S. Intelligence
Community and as the principal adviser to the President, the National Security Council, and the
Homeland Security Council for intelligence matters related to the national security. *See* 50
U.S.C. § 403(b)(1), (2).

11. ~~(U)~~ The United States "Intelligence Community" includes the Office of the
Director of National Intelligence; the Central Intelligence Agency; the National Security
Agency; the Defense Intelligence Agency; the National Geospatial-Intelligence Agency; the
National Reconnaissance Office; other offices within the Department of Defense for the
collection of specialized national intelligence through reconnaissance programs; the intelligence
elements of the military services, the Federal Bureau of Investigation, the Department of the
Treasury, the Department of Energy, the Drug Enforcement Administration, and the Coast
Guard; the Bureau of Intelligence and Research of the Department of State; the elements of the
Department of Homeland Security concerned with the analysis of intelligence information; and
such other elements of any other department or agency as may be designated by the President, or
jointly designated by the DNI and heads of the department or agency concerned, as an element of
the Intelligence Community. *See* 50 U.S.C. § 401a(4).

12. ~~(U)~~ The responsibilities and authorities of the Director of National Intelligence
are set forth in the National Security Act of 1947, as amended. *See* 50 U.S.C. § 403-1. These
responsibilities include ensuring that national intelligence is provided to the President, the heads
of the departments and agencies of the Executive Branch, the Chairman of the Joint Chiefs of

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//HCS//ORCON/NOFORN//MR~~
Staff and senior military commanders, and the Senate and House of Representatives and
committees thereof. *See* 50 U.S.C. § 403-1(a)(1). The DNI is also charged with establishing the
objectives of, determining the requirements and priorities for, and managing and directing the
tasking, collection, analysis, production, and dissemination of national intelligence by elements
of the Intelligence Community. *Id.* § 403-1(f)(1)(A)(i) and (ii). The DNI is also responsible for
developing and determining, based on proposals submitted by the heads of agencies and
departments within the Intelligence Community, an annual consolidated budget for the National
Intelligence Program for presentation to the President, and for ensuring the effective execution of
the annual budget for intelligence and intelligence-related activities, and for managing and
allotting appropriations for the National Intelligence Program. *Id.* § 403-1(c)(1)-(5).

13. (U) In addition, the National Security Act of 1947, as amended, provides that
“[t]he Director of National Intelligence shall protect intelligence sources and methods from
unauthorized disclosure.” 50 U.S.C. § 403-1(i)(1). Consistent with this responsibility, the DNI
establishes and implements guidelines for the Intelligence Community for the classification of
information under applicable law, Executive orders, or other Presidential directives and access to
and dissemination of intelligence. *Id.* § 403-1(i)(2)(A), (B). In particular, the DNI is responsible
for the establishment of uniform standards and procedures for the grant of access to Sensitive
Compartmented Information (“SCI”) to any officer or employee of any agency or department of
the United States, and for ensuring the consistent implementation of those standards throughout
such departments and agencies. *Id.* § 403-1(j)(1), (2).

14. (U) By virtue of my position as the Director of National Intelligence, and unless
otherwise directed by the President, I have access to all intelligence related to the national
security that is collected by any department, agency, or other entity of the United States. *See* 50

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT [REDACTED] TSP//HCS//ORCON/NOFORN//MR~~
1 U.S.C. § 403-1(b); Executive Order 12333 § 1.3(a), as amended. Pursuant to Executive Order
2 No. 12958, 3 C.F.R. § 333 (1995), as amended by Executive Order 13292 (March 25, 2003),
3 reprinted as amended in 50 U.S.C.A. § 435 at 93 (Supp. 2004), the President has authorized me
4 to exercise original TOP SECRET classification authority.

5 ~~(U)~~ **ASSERTION OF STATE SECRETS PRIVILEGE**

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7 15. ~~(U)~~ After careful and actual personal consideration of the matter, based upon my
8 own knowledge and information obtained in the course of my official duties, including the
9 information contained in the Public and Classified *In Camera*, *Ex Parte* Declarations of Deborah
10 A. Bonanni, Chief of Staff, National Security Agency, I have determined that the disclosure of
11 certain information—as set forth herein and described in more detail in the Classified NSA
12 Declaration—would cause exceptionally grave damage to the national security of the United
13 States and, therefore, must be protected from disclosure and excluded from this case. Thus, as to
14 this information, I formally assert the state secrets privilege. In addition, it is my judgment that
15 sensitive state secrets are so central to the subject matter of the litigation that any attempt to
16 proceed in the case will substantially risk the disclosure of the privileged information described
17 herein and in more detail in the classified declarations, and will therefore risk exceptionally
18 grave damage to the national security of the United States.
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21 ~~(U)~~ **ASSERTION OF STATUTORY PRIVILEGE UNDER NATIONAL SECURITY ACT**

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23 16. ~~(U)~~ Through this declaration, I also hereby invoke and assert a statutory privilege
24 held by the Director of National Intelligence under the National Security Act to protect the
25 information described herein, *see* 50 U.S.C. § 403-1(i)(1). My assertion of this statutory
26 privilege for intelligence sources and methods is coextensive with my state secrets privilege
27 assertion.
28

~~TOP SECRET//COMINT [REDACTED] TSP//ORCON/NOFORN//MR~~

17. ~~(U)~~ In general and unclassified terms, the following categories of information are subject to my state secrets and statutory privilege assertions:

- A. ~~(U)~~ Information concerning the specific nature of the al-Qaeda terrorist threat; and
- B. ~~(U)~~ Information that may tend to confirm or deny whether the plaintiffs have been subject to any alleged NSA intelligence activity that may be at issue in this matter; and
- C. ~~(U)~~ Any information concerning NSA intelligence activities, sources, or methods that may relate to or be necessary to litigate plaintiffs' allegations, including allegations that the NSA, with the assistance of telecommunications carriers such as AT&T, indiscriminately intercepts the content of communications and also collects the communication records of millions of Americans as part of an alleged presidentially-authorized "Program" after 9/11. *See, e.g.*, Complaint at ¶¶ 2-13; 39-97.
 - ~~(U)~~ The scope of this assertion includes but is not limited to:
 - (i) ~~(U)~~ Information concerning the scope and operation of the now inoperative "Terrorist Surveillance Program" ("TSP") regarding the interception of the content of certain one-end international communications reasonably believed to involve a member or agent of al-Qaeda or an affiliated terrorist organization, and any other information related to demonstrating that the NSA does not otherwise engage in the content surveillance dragnet that the plaintiffs allege; and
 - (ii) ~~(U)~~ Information concerning whether or not the NSA obtained from telecommunications companies such as AT&T communication transactional records as alleged in the Complaint; *see, e.g.*, Complaint ¶¶ 10; 82-97; and
 - (iii) ~~(U)~~ Information that may tend to confirm or deny whether AT&T (and to the extent relevant or necessary, any other telecommunications carrier), has provided assistance to the NSA in connection with any alleged activity.

1 ~~(U)~~ DESCRIPTION OF INFORMATION AND HARM OF DISCLOSURE

2 A. ~~(U)~~ Information Concerning the al-Qaeda Terrorist Threat

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4 18. ~~(U)~~ To the extent specific information about the al-Qaeda threat is relevant to
5 litigation of plaintiffs' allegations as to post-9/11 actions taken to meet that threat, such
6 information could not be disclosed without revealing intelligence sources, methods, and
7 information of the United States and thereby causing exceptionally grave damage to the national
8 security. Therefore, I assert the state secrets and statutory privilege to protect such information
9 from disclosure.
10

11 19. ~~(S//OC/NF)~~ The intelligence activities, sources, and methods that are implicated
12 by this lawsuit, and put at risk of disclosure in further proceedings, must be viewed and
13 understood in the context of the extremely serious threat faced by the United States. In sum, the
14 Intelligence Community assesses that al-Qaeda remains intent on conducting terrorist attacks
15 inside the United States. This is so notwithstanding a series of setbacks to the al-Qaeda terrorist
16 network. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20

21 [REDACTED] Preventing such attacks is the U.S. Intelligence Community's highest priority, and the
22 Intelligence Community is collecting information aggressively against the al-Qaeda network to
23 uncover indications of credible threats.¹
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28 ¹ ~~(S//OC/NF)~~ The following summary of the current al-Qaeda threat is drawn from an
Intelligence Community assessment made in January 2009.

20. (TS//HCS [REDACTED]//OC/NF [REDACTED]) Al-Qaeda's strategic intent remains focused on striking the United States— [REDACTED]

[REDACTED]. A body of reporting—including public statements from senior leaders, [REDACTED]—highlights the persistent and evolving threat the group poses to the United States and our allies.

- Usama Bin Ladin's statement in September 2007 praising the Iraq jihad and the 9/11 attacks indicated that al-Qaeda saw no "innocent" American citizens because they were complicit with their government's policies, and that the solution "is to continue to escalate the killing and fighting against you."

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- The plot to bring down airliners between the United Kingdom and North America that was disrupted in August 2006 demonstrated al-Qaeda's continued emphasis on large

~~TOP SECRET//COMINT [REDACTED]//TSP//HCS//ORCON/NOFORN//MR~~

scale, high-profile attacks against the West,

• Al-Qaeda senior leaders and their successors since 9/11 have consistently focused plotting against U.S. interests on either conducting spectacular attacks against the Homeland or striking other symbolic or economic targets. [REDACTED]

21. ~~(TS//HCS, [REDACTED]//OC/NF, [REDACTED])~~ The Intelligence Community is not aware of the details of a current plot to attack the U.S. Homeland. [REDACTED]

[illegible]

~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//ORCON/NOFORN//MR~~

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22. ~~(S//NF)~~ [REDACTED]

~~(S//NF)~~ Al-Qaeda's Continued Efforts to Train and Deploy Operatives

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23. ~~(TS//HCS, [REDACTED]//OC/NF)~~ [REDACTED]

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~~TOP SECRET//COMINT [REDACTED]//TSP//HCS//ORCON/NOFORN//MR~~

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24. ~~(TS//HCS [REDACTED]//OC/NF [REDACTED])~~ [REDACTED]

~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON/NOFORN//MR~~

25. ~~(TS//HCS~~ [REDACTED] ~~/OC/NF)~~ The death or detention of more than a dozen al-Qaeda

senior leaders and their deputies since early 2008 represents significant losses for the group.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. ~~(TS//~~ [REDACTED] ~~)~~ The Internet is a contributing factor in the radicalization of some individuals, increasing the risk of self-selecting fighters attempting to establish affiliations with extremist organizations or engaging in operations independent of formal terrorist groups. Additionally, al-Qaeda and like-minded Sunni extremists are attempting [REDACTED]

[REDACTED]

~~(S//NF)~~ Al-Qaeda's Weapons and Tactics

27. ~~(S//NF)~~ [REDACTED]

[REDACTED]

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30. ~~(TS//SI//OC/NF)~~ These various examples of some of our intelligence

~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON/NOFORN//MR~~
information demonstrate that the al-Qaeda network continues to plan ways to inflict a

1 catastrophic attack. The severity of that threat and the difficulty of tracking al-Qaeda is precisely
2 the reason the Government is utilizing all lawful intelligence gathering capabilities. I set forth
3 this information not only to provide the Court with crucial background as to why the intelligence
4 activities implicated by or directly at issue in this case are being undertaken, but also to assert a
5 claim of privilege over this threat information. Although the foregoing threat assessment
6 demonstrates why the Government undertakes the activities described herein, the Government
7 cannot disclose this threat information in defending the legality of the intelligence activities,
8 sources, and methods being challenged, since to do so obviously would disclose to our
9 adversaries what we know of their plans and how we may be obtaining information about them.
10 Such disclosures would lead our adversaries not only to alter their plans, but also to implement
11 greater security for their communications, thereby increasing the risk of non-detection. In
12 addition, disclosure of threat information might reveal human sources for the United States and,
13 thus compromise those sources and put lives in danger. Accordingly, although I believe this
14 threat information is crucial to understanding the NSA intelligence activities, sources, and
15 methods implicated by the plaintiffs' allegations, I must assert the states secrets privilege and
16 the DNI's statutory privilege over this classified threat information because of the exceptionally
17 grave danger to national security that could reasonably be expected to result from its disclosure.
18

19 **B. ~~(U)~~ Information That May Tend to Confirm or Deny Whether the Plaintiffs**
20 **Have Been Subject to the Alleged NSA Intelligence Activities**

21 31. ~~(U)~~ Next, I am also asserting privilege over information that would reveal
22 whether particular individuals, including the named plaintiffs in this lawsuit, have been subject
23 to the alleged NSA intelligence activities. Disclosure of such information would cause
24 exceptionally grave damage to the national security.
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~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//ORCON/NOFORN//MR~~

32. ~~(TS//SI//TSP//OC/NF)~~ [REDACTED]

33. ~~(U)~~ The NSA cannot publicly confirm or deny whether any particular individual is subject to surveillance activities. If the NSA were to reveal that an individual is the target of surveillance, the collection capability relating to that individual would certainly be compromised. On the other hand, if the NSA were to reveal that an individual is not the target of surveillance, adversaries would know that a particular individual has avoided surveillance and is a secure source for communicating. Moreover, providing assurances to those individuals that are not being targeted quickly becomes unworkable when faced with a case in which an individual has in fact been targeted. If the NSA were to confirm that any specific individual is not the target of surveillance, but later refuse to confirm or deny that information in a case involving an actual target, it would be apparent that surveillance was occurring in the latter case. The only recourse for the NSA is to neither confirm nor deny whether someone has been targeted or subject to NSA activities, regardless of whether the individual has been targeted or not. To say otherwise when challenged in litigation would result in the frequent, routine exposure of NSA information, sources, and methods, and would severely undermine surveillance activities in general.

C. ~~(U)~~ Information Concerning NSA Activities, Sources, or Methods

34. ~~(U)~~ Second, I am also asserting privilege over any other facts concerning NSA intelligence activities, sources, or methods that may relate to or be necessary to adjudicate the plaintiffs' claims, including allegations that the NSA, with the assistance of telecommunication companies including AT&T, has indiscriminately intercepted the content and obtained the communications records of millions of ordinary Americans as part of the Program authorized by the President after 9/11. *See, e.g.*, Complaint at ¶¶ 2-13; 39-97. As noted above, my privilege assertion encompasses (1) facts concerning the operation of the now-defunct Terrorist Surveillance Program, including any facts needed to demonstrate that the TSP was limited to the interception of the content² of one-end foreign communications reasonably believed to involve a member or agent of al-Qaeda or an affiliated terrorist organization, and that the NSA does not otherwise conduct a dragnet of content surveillance as the plaintiffs allege; and (2) information concerning whether or not the NSA obtains transactional communication records from telecommunications companies such as AT&T as plaintiffs allege.

35. ~~(U)~~ As the NSA indicates, *see* Public NSA Declaration ¶ 14, the NSA's collection of the content of communications under the TSP was directed at international communications in which a participant was reasonably believed to be associated with al-Qaeda or an affiliated organization. Thus, as the Government has previously stated, plaintiffs' allegation that the NSA has indiscriminately collected the content of millions of communications sent or received by people inside the United States after 9/11 under the TSP is false. I concur with the NSA that to the extent it must demonstrate in this case that the TSP was not the content dragnet plaintiffs allege, or demonstrate that the NSA has not otherwise engaged in the alleged content dragnet,

² The term "content" is used herein to refer to the substance, meaning, or purport of a communication, as defined in 18 U.S.C. § 2510(8).

~~TOP SECRET//COMINT~~ [REDACTED] ~~TSP//HCS//ORCON/NOFORN//MR~~
1 highly classified NSA intelligence sources and methods about the operation of the TSP and other
2 NSA intelligence activities would be disclosed which would cause exceptional harm to national
3 security.

4 36. ~~(U)~~ I am also asserting privilege over information concerning whether or not the
5 NSA obtained from telecommunications companies such as AT&T the complete and allegedly
6 ongoing disclosure of private telephone and Internet transactional records of those companies
7 millions of customers, *see, e.g.*, Complaint ¶¶ 10 and 82-97. I concur with the NSA that
8 confirmation or denial of any information concerning this allegation would cause exceptionally
9 grave harm to national security, including by risking disclosure of whether or not the NSA
10 utilizes particular intelligence sources and methods and, thus, the NSA's capabilities or lack
11 thereof.
12

13
14 37. ~~(TS//SI//TSP//OC/NF)~~ In particular, as set forth in the NSA's Classified
15 Declaration, the United States faced urgent and immediate intelligence challenges after the
16 September 11 attacks, and undertook signals intelligence activities pursuant to presidential
17 authorization that were designed to meet those challenges and to detect and prevent future
18 terrorist attacks by al-Qaeda and its affiliates. Those activities include the Terrorist Surveillance
19 Program ("TSP") and similar content surveillance that later became subject to orders of the
20 Foreign Intelligence Surveillance Court, as well as the bulk collection of telephony and Internet
21 non-content meta data currently authorized by the FISC and used to discover contacts [REDACTED]
22

23 [REDACTED] See Classified NSA Declaration
24 ¶¶ 39-67.
25

26 38. ~~(TS//SI//TSP//OC/NF)~~ Based on my personal consideration and judgment as to
27 the harm disclosure would cause to national security, my privilege assertion includes, but is not
28

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//HCS//ORCON/NOFORN//MR~~
limited to, the following activities discussed in the NSA classified declaration:

39. ~~(TS//SI//TSP//OC/NF)~~ First, I assert privilege over facts concerning the operation of the Terrorist Surveillance Program and any other NSA intelligence activities needed to demonstrate that the TSP was limited to the interception of one-end foreign communications reasonably believed to involve a member or agent of al-Qaeda or an affiliated terrorist organization, and that the NSA does not otherwise conduct a dragnet of content surveillance as the plaintiffs allege. Such facts include those concerning (1) how targets were selected under the TSP; (2) how specific methods were used under the TSP to intercept telephone and Internet communications and to minimize the risk of collecting non-target communications and purely domestic communications; (3) the nature and identity of the targets under the TSP, [REDACTED] [REDACTED] (4) and additional classified details about the operation of the TSP that would be necessary to litigate the plaintiffs' allegations (to the extent relevant) including facts concerning the operational swiftness and agility of the TSP, particularly in conjunction with meta data analysis [REDACTED] [REDACTED]; and the effectiveness and success of the TSP; and (5) other NSA surveillance activities that may be needed to address and disprove the content dragnet allegations [REDACTED]

[REDACTED] See Classified NSA Declaration ¶¶ 39-47. In my judgment, revealing or risking disclosure of the foregoing NSA intelligence activities, sources, and methods in order to show that the NSA is not conducting the "dragnet" on the content of communications that plaintiffs allege would cause exceptional harm to national security by disclosing to our adversaries the ability of the United States to monitor and track their activities and communications.

40. ~~(TS//SI//TSP//OC/NF)~~ Third, I also assert privilege over facts that would

~~TOP SECRET//COMINT~~ [REDACTED] ~~//TSP//ORCON/NOFORN//MR~~

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disclose or describe the NSA's meta data collection activities. See Classified NSA Declaration

¶ 49-57. In my judgment, the NSA is unable to disclose any information about the existence or operation of the NSA's bulk collection or targeted analysis of Internet or telephony meta data without causing exceptionally grave harm to national security. These are among the most important intelligence tools the NSA uses, and they have never been officially confirmed or denied by the United States. Disclosing or confirming these activities would seriously undermine an essential tool for tracking possible terrorist plots and would help foreign adversaries evade detection. Such a disclosure would also undermine ongoing intelligence operations authorized by the FISC.

41. ~~(TS//SI//TSP//OC/NP)~~ Finally, I also assert privilege over information concerning NSA activities conducted pursuant to various FISC orders and under the authority of the FISA described by the NSA. See Classified NSA Declaration ¶¶ 58-67. In my judgment, disclosure of current surveillance activities under orders and supervision of the FISC and authority of the FISA, either directly or indirectly, would seriously compromise, if not destroy, vital ongoing intelligence operations. My privilege assertion extends to the existence of and any information concerning the (i) FISC Pen Register Order, as subsequently reauthorized, *see id.* ¶ 59; (ii) FISC Telephone Business Records Order, as subsequently reauthorized, *see id.* ¶¶ 60-63; [REDACTED] (iv) FISC Foreign Telephone and Email Order, *see id.* ¶ 65; and (v) NSA activities conducted pursuant to the Protect America Act and the Foreign Intelligence Surveillance Act Amendments Act of 2008, including directives issued to telecommunication carriers under those Acts, *see id.* ¶¶ 66-67.

42. ~~(TS//SI//TSP//OC/NP)~~ I concur with the NSA that the activities discussed herein and described further by the NSA--in particular the meta data collection activities--are among the

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1 most important intelligence tools available to the United States for protecting the Homeland from

2 another catastrophic terrorist attack. I also concur that [REDACTED] e

3 [REDACTED]
4 [REDACTED]
5 [REDACTED] In my judgment, after personal
6 consideration of the matter, disclosing the information described herein and by the NSA would
7 compromise these critical activities, sources, and methods, thereby helping our adversaries evade
8 detection and causing exceptionally grave damage to the national security of the United States.
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10 D. ~~(U)~~ Plaintiffs' Allegations that AT&T Provided Assistance to the NSA with
11 the Alleged Activities

12 43. ~~(U)~~ In addition, I am asserting privilege over information that may tend to
13 confirm or deny whether or not AT&T (or to the extent necessary whether or not any other
14 telecommunications provider) has assisted the NSA with alleged intelligence activities. The
15 disclosure of any information that would tend to confirm or deny allegations of such assistance
16 would cause exceptionally grave harm to the national security. Confirming or denying such
17 allegations, again, would reveal to foreign adversaries whether or not the NSA utilizes particular
18 intelligence sources and methods and, thus, either compromise actual sources and methods or
19 disclose that the NSA does not utilize a particular source or method. Such confirmation or denial
20 would also replace speculation with certainty for hostile foreign adversaries who are balancing
21 the risk that a particular channel of communication may not be secure against the need to
22 communicate efficiently.
23

24 44. ~~(TS//SI- [REDACTED] /TSP//OC/NF)~~ [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

~~TOP SECRET//COMINT [REDACTED] //TSP//ORCON/NOFORN//MR~~

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³ ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF)~~ In addition, I have reviewed the classified certification of then-Attorney General Mukasey submitted to the Court pursuant to Section 802 of the FISA Act Amendments Act of 2008 and assert privilege over specific information described therein, [REDACTED]
[REDACTED]

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47. ~~(TS//SI~~ [REDACTED] ~~//TSP//OC/NF~~ [REDACTED]

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Accordingly, I assert the state secrets and DNI statutory privilege over such information,

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(U) RISK OF LITIGATION

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~~TOP SECRET//COMINT [REDACTED]//TSP//HCS//ORCON/NOFORN//MR~~
1 methods, including bulk meta data collection activities. Those vital activities, as described

2 herein, are highly classified, sensitive, and fragile, and any effort to disclose information about
3 them could have grave consequences for the national security.


4 50. ~~(TS//SI//OC/NF)~~ The stakes we face in the U.S. Intelligence Community are of
5 the highest magnitude. We know that al-Qaeda continues to plan a mass casualty "spectacular"
6 attack inside the United States again that would cause catastrophic loss of life, severe economic
7 harm, or threaten the continuity of government. The NSA's activities described herein and by
8 the NSA, including NSA sources and methods currently being utilized under authority of the
9 FISA, are all directed at this terrible threat.
10

11 ~~(U)~~ CONCLUSION
12

13 51. ~~(U)~~ In sum, I am asserting the state secrets privilege and the DNI's statutory
14 privilege set forth in 50 U.S.C. § 403-1(i)(1) to protect the classified national security
15 information described herein and in the Classified NSA Declaration. Moreover, because
16 proceedings in this case risk disclosure of privileged and classified intelligence-related
17 information, I respectfully request that the Court not only protect that information from
18 disclosure, but to take all steps necessary, including dismissal of this action, to protect the
19 intelligence information, sources, and methods described herein in order to prevent exceptional
20 harm to the national security of the United States.
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22 I declare under penalty of perjury that the foregoing is true and correct.
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24
25 DATE: April 3, 2009


26 DENNIS C. BLAIR
27 Director of National Intelligence
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~~TOP SECRET//COMINT [REDACTED]//TSP//ORCON/NOFORN//MR~~